

DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY

**OWNERSHIP AND CONTROL OF SHIPS**

**Maritime Transport Committee**

**March 2003**

## **Summary**

The Maritime Transport Committee has undertaken a review of ship registration provisions in various ship registers in order to assess the possibilities available to beneficial owners to mask or hide their identity if they have a reason for doing so.

This report analyses both ship registrations requirements and the role played by associated corporate registration requirements and the use of instruments that permit or facilitate the cloaking of beneficial owners.

## OWNERSHIP AND CONTROL OF SHIPS

### KEY FINDINGS

- The study has found that it is very easy, and comparatively cheap, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known.
- While some ship registers actively facilitate and promote anonymity for reluctant owners, the principal mechanisms are not the registers themselves, but the corporate mechanisms that are available to owners to cloak their identity.
- These corporate mechanisms are freely available in many jurisdictions, they are quite legal, and will provide a properly incorporated International Business Corporation that can transact business almost everywhere in the world (but generally not in the country of incorporation).
- From the perspective of the ship registering process, the most important single feature that facilitates anonymity of individuals is the ability (quite sensible from a commercial perspective) of corporations to be registered as owners of vessels.
- The most common and effective mechanisms that can provide anonymity for beneficial owners include bearer shares, nominee shareholders, nominee Directors, the use of Intermediaries to act on owners' behalf and the failure of jurisdictions to provide for effective reporting requirements.
- The most common institutional devices used to create corporations are Private Limited Companies, and International Business Corporations (IBCs). Other devices such as Trusts, Foundations and Partnerships may also be used.
- Open registers, which by definition do not have any nationality requirements, are the easiest jurisdictions in which to register vessels that are covered by complex legal and corporate arrangements. The arrangements will almost certainly cover a number of international jurisdictions which would be much more difficult to untangle.
- While open registers would be (by choice) the most obvious targets for beneficial owners wishing to avoid revealing their identities, traditional registers, including those of the OECD, may not be immune to being used by anonymous beneficial owners. The additional complexity and risk of registering vessels in traditional registers would be made up by the status and perhaps lesser attention directed towards vessels registered in these traditional registers.
- Some institutional arrangements involving dependencies, overseas territories and jurisdictions with special constitutional and/or administrative arrangements, (as exist, for example in the UK, France, the Netherlands and Australia), as well as some free trade arrangements (such as the EU) may also provide opportunities, albeit complex and perhaps risky ones, for beneficial owners seeking anonymity to achieve their objectives.

## OWNERSHIP AND CONTROL OF SHIPS

### Background

1. At its meeting on 16-17 July 2002, the Maritime Transport Committee approved a number of projects related to transport security, including one to examine the issue of transparency in the ownership and control of ships.
2. This paper examines how the beneficial (or ultimate) ownership and control of vessels can be cloaked by owners who for one reason or another wish to remain anonymous. It examines this issue by reference not only to specific ship registration procedures that exist in flag states, but also by examining more general corporate instruments that provide the principal means of effectively cloaking beneficial ownership.
3. Anonymity can be sought by owners for a variety of reasons. Some may be perfectly legitimate and even innocuous. Others may wish to remain anonymous to minimise legal and fiscal exposure (which may or may not be legal), or for reasons that are absolutely illegal, such as criminal activities or money laundering.
4. No analysis has been attempted of the reasons why shipowners would want, or indeed why they should be granted anonymity in the first place. Instead this paper starts with the assumption that from a security perspective knowing the identity of all those associated with the ownership of a vessel, including the ultimate beneficial owner, could be crucially important. Therefore, while those processes or instruments that facilitate anonymity for shipowners are described, examined and analysed, no value judgement is made as to whether such anonymity is desirable or undesirable. This remains a task for governments to balance amongst their many priorities, including whether or not security has become of paramount importance.
5. The starting point for this paper is the premise is that an increase in transparency in the ownership and control of ships must enhance security, and if potential terrorists find it more difficult to hide their activities then this would greatly assist security forces in the detection and prevention of terrorist attacks, as well as the apprehension of perpetrators.
6. This paper will examine the means by which secretive owners use corporate vehicles and vessel registrations procedures to ensure their anonymity, as well as the features of corporate and shipping register requirements that permit, or even facilitate, the cloaking of the true identities of the ultimate owners of vessels; that is those who exercise true control of what those vessels do, and the purposes to which the revenue they generate can be put to.
7. If approved by the Maritime Transport Committee, a further study will be undertaken to examine what possible remedies may be available to lift that veil of secrecy in ways that enhance security while still maintaining commercial confidentiality for activities and information that do not adversely impact on security.

## **Why Focus on Ownership and Control?**

8. In the final analysis it is beneficial ship owners that decide how their vessels will be used, or at least remain responsible for the uses to which their vessels are put, even if this is done without their knowledge or consent. Owners are also the ultimate beneficiaries of the revenue generated by vessels they own, and can put these revenues to any use they wish, including activities that may be inimical to security interests.

9. Of course, owners can delegate many of their responsibilities to ship managers, who may (with or without the beneficial owner's knowledge and/or consent) themselves undertake illegal or undesirable activities. It is therefore also important to know the details of the managers of the day-to-day operations of those vessels. The IMO's Legal Committee considered this issue at its 84<sup>th</sup> Session in April 2002, and concluded that from its perspective the following questions were relevant:

- Who appoints the crew?
- Who fixes the use of the ship?
- Who signs the charterparty on behalf of the owner?

10. These matters are very important, and note that they will be taken up in more detail during the Diplomatic Conference on Maritime Security to be held at the IMO in December 2002.

11. However, it is argued here that knowing the details of the day-to-day managers does not mean that all potential security threats are covered, as there would be many instances in which the ultimate, or beneficial, owner would retain tight control of all or part of those ships' activities, and knowledge of the true identity of beneficial owners may be crucial in the fight against terrorism

## **The Potential Impact on Security**

12. This paper starts with the premise that terrorists will use any available method to prepare for, and execute, acts of terror. It has been widely recognised by all countries under the threat of terrorism that ships are an obvious, and potentially devastating, source of terrorist acts. It seems axiomatic in these circumstances that everything should be done to minimise, if not absolutely eliminate, those risks.

13. The extent to which governments and their security agencies are willing to interfere with the "normal" operation of ships to achieve the desired level of security remains the responsibility of those governments and agencies. Therefore, this paper will limit itself to exploring the potential risks posed by ships, and, more importantly, the ways and means available to terrorists to hide their involvement in ships that may be used to facilitate, fund or execute acts of terror.

14. Ships can be used in a number of ways by terrorists to further their aims:

- As means of overtly or covertly transporting men, equipment and weapons around the world.
- As means of delivering bombs or other means of destruction to their destination, such as in a container set to explode near a city or other target.
- Ships as weapons in their own right, such as oil or gas tankers being rigged to be used as floating bombs; and

- As means of raising money, through legal and/or illegal activities to finance terrorist activities.

15. Of course, in all of these cases it is possible that innocent shipowners could be blissfully unaware (or perhaps uncaring) that their vessels could be used for such purposes. However, logic would dictate that on many occasions terrorist related activities (especially those that may be complex or logistically difficult) could only be successfully executed with the knowledge and agreement (and perhaps under the direction) of the owners.

16. If the ownership and control of vessels were perfectly transparent, then owners who were known or suspected of being terrorists would find it much more difficult to use their vessels for such purposes, without at least raising the suspicion of security agencies. Perfect transparency would force terrorists into complex and convoluted ways of hiding their involvement in such ships, which would raise their own security and secrecy problems for the terrorists, and would increase their risk of being discovered.

17. However, not only does perfect transparency not exist, but in fact anonymity seems to be the rule rather than the exception, and not only is it permitted, but in many cases positively encouraged. This enables terrorists and would be terrorists to remain intimately involved in the operation of their vessels, while remaining totally hidden, through the use of relatively simple mechanisms that are readily available and legally tolerated in almost all jurisdictions.

18. It is acknowledged here that the fundamental purpose of these mechanisms is not to provide cover for terrorists, or others involved in illegal or criminal activities. Beneficial owners may seek anonymity for a variety of reasons, legal or otherwise, that have nothing to do with security. However, the reality is that regardless of the reasons why the cloak of anonymity is made available, if it is provided it will also assist those who may wish to remain hidden because they engage in illegal or criminal activities, including terrorists.

19. It will be up to governments to decide what should be the trade-off between enhanced security through the lifting of this veil of secrecy, and the erosion of personal and corporate liberties that may be necessary to increase transparency. This paper makes no judgement on this issue, but will simply examine and analyse the mechanisms available to shipowners who, for one reason or another, desire to remain anonymous, and will attempt to explain how such mechanisms can be used to achieve that objective.

## **Ship Registration**

20. In order to operate internationally vessels must be registered in a recognised ship register, which will then permit the vessel to fly its flag. In effect the state of registration will then become the ship's "Flag State". The Flag State's obligations and responsibilities towards ships carrying its flag are contained in the UN Law of the Sea Convention, the relevant parts of which are reproduced in Appendix A.

21. While those provisions are relatively comprehensive in respect of technical, crewing and legal requirements that must be met by vessels before they can operate, apart from noting that there "*must exist a genuine link between the State and the ship*" (Article 91), the Law of the Sea Convention is silent on ownership requirements, which is a crucial factor from this paper's perspective.

22. The genuine link concept has been used a number of times in respect of linking the nationality of a ship to the state in which it is registered. This included a similar reference in the 1986 UN Convention on the Registration of Ships, which has never come into force.

23. While many have argued that the “genuine link” should restrict the ownership of vessels to nationals of the state in which the ship has been registered, or to some other clearly established linkage, the *de-facto* interpretation of this provision has been considerably less than this, and the linkage requirement has been widely accepted as being met by nothing more than a commercial, fee-for-service relationship between the owner and the Flag State.

24. This very loose interpretation has enabled the existence and rapid growth of “Open Registers” where the nationality of the owner/s has no relevance. From an operational or commercial point of view this lack of a direct link is probably unimportant, as long as the Flag State exercises adequate oversight and control over the shipowner and his vessel.. However, this lack of a link also facilitates the opportunities available to shipowners to hide their identities. This also extends to corporate ownership of ships, where the country of registration of the corporate entity is also of no relevance and this in turn enhances the opportunities for anonymity..

25. All ship registers require some information on ownership to be provided when application is made for the registration of a ship. As a general observation, most registers examined in the course of preparing this paper at least superficially attempt to establish the ownership of vessels on their register. At the very least they require some ownership details to be provided, even if their ability to unequivocally confirm the information provided may for a variety of reasons be inadequate.

26. The principal difference between registers is that while some clearly make some effort to establish the true ownership (but may be thwarted by other mechanisms), others advertise anonymity as a desirable attribute of that register. For example an advertisement for the Anguillan ship register (but there are many others) notes that two key features of the register are the non disclosure of beneficial owners and the availability of bearer shares which greatly assist owners to ensure anonymity.

27. Some detailed information related to vessel ownership, and the nationality requirements of a number of ship registers are provided in Appendix B. The details in Appendix B are not exhaustive and cover only a relatively small number of registers. Also, the Annex does not list all registry requirements, but only those that could facilitate anonymity (such as bearer shares or allowing International Business Corporations to be shipowners). The purpose of this Appendix is to demonstrate the range of mechanisms that can be found in registers to obtain anonymity. By and large all make provision for basic ownership details to be included in application forms. Of course, the accuracy of the information collected in this way depends on the care and diligence with which information supplied is checked and verified, but we have no way of knowing the performance of individual registers in this respect.

28. In any case, a scrutiny of registers has revealed that in practice it is not so much the registers themselves that enable reclusive owners to remain anonymous, but the corporate instruments and structures that are freely available internationally. While these mechanisms are intended to “facilitate” international commerce, their common feature is that they also create an effective cloak to ensure the anonymity of beneficial owners, and have been eagerly adopted by shipowners as a “normal” way of organising shipping enterprises.

29. In other words the means by which shipowners can ensure anonymity can be found not so much in the shipping registers themselves (although some seem very happy to facilitate this happening), but in international corporate arrangements that exist for reasons quite unrelated to shipping. These arrangements are explored in more detail in the next section

## The Corporate Veil

30. Within the context of corporate governance, tax havens and money laundering, the OECD has undertaken considerable work on mechanisms that facilitate the anonymity of beneficial owners, the so called “Corporate Veil”. The analysis contained in that report has been heavily drawn upon in the preparation of parts of this paper<sup>1</sup>.

31. Anonymity can be achieved in two ways. First, through the use of various mechanisms that enable the identity of beneficial owners to remain cloaked, or at least known to very few people. The second is through institutional devices that govern the creation of corporate entities and which are also geared to minimising the exposure of beneficial owners when these seek anonymity. On most occasions beneficial owners who seek to remain hidden will use a combination of methods to achieve their intent. These mechanisms and institutional devices are discussed in more detail below.

### *Mechanisms to Achieve Anonymity*

#### *Bearer Shares*

32. Bearer shares are perhaps the single most important (and perhaps the most widely used) mechanism to ensure total anonymity for beneficial owners. Bearer shares are negotiable instruments that accord ownership of corporations to the person (or persons) who *physically* possess the bearer share certificates. That is, mere possession accords ownership, so that they can be passed from person to person without money necessarily changing hands, nor having to meet any registration or transfer requirements.

33. Unlike normal registered shares (such as those traded through a stock exchange) which are transferred by written or electronic means (thus creating a traceable trail) bearer shares are transferred by simple delivery of the share certificate to another person. Bearer shares do not contain the name of the shareholder, and with the possible exception of their serial numbers they are not registered.

34. Because of their very nature bearer shares provide a high level of anonymity and are easily transferable in the event of an investigation. This is especially the case when these bearer shares are issued by private limited companies. While some jurisdiction are acting to reduce the potential misuse of bearer share (for example by registering them and requiring notification of transfer), many others are actively promoting them as ways of ensuring the anonymity of participants.

#### *Nominee Shareholders*

35. It is implicit that private companies must have at least one share, and at least one shareholder. Generally such companies are created with a structure that contains more than one share, but compared to public companies there are far fewer shares in private companies (counted in single digits rather than millions) so it is far easier for such private companies to be controlled by a small number of people, or perhaps only one person.

36. Every registered private company that is structured around ordinary shares (that is, shares other than bearer shares) needs to provide some details of shareholders at the time of registration. In these cases, where beneficial owners wish to hide their identity they are able to appoint “nominee shareholders”,

---

1. “Behind the Corporate Veil - Using Corporate Entities for Illicit Purposes.” OECD 2001

that is shareholders nominated by the true owner of the shares to represent their interests in the company, including making decisions and issuing directions on their behalf.

37. Not all jurisdictions can compel nominee shareholders to reveal the identity of the actual beneficial owner(s), so this provides a legally robust means of owners avoiding their identities being known.

#### *Nominee Directors*

38. All corporate bodies require the appointment of at least one Director, who is nominally responsible for the operation of the company. In normal private companies such Director(s) will generally come from the owners themselves. However, many jurisdictions allow the appointment of Nominee Directors, whose names will appear on all company documents and official registrations, and may even exercise some functions within the company. While they will pass on all official duties (and ultimate decision making) to the beneficial owner(s), by acting as their legal intermediary they would shield their identities. Like nominee shareholders only some jurisdictions can legally compel Nominee Directors to disclose the true identity of the true owners.

39. Some jurisdictions further allow corporations to be nominee directors, thus creating a further level of complexity in the company structure.

#### *Intermediaries*

40. This category include company formation agents, trust companies, lawyers, trustees and other professionals that offer their services to those who wish to create and operate private companies in particular jurisdictions. Intermediaries are very prominent in offshore locations, and specifically design their services to ensure anonymity for those who desire it. Many of the intermediaries are globalised off-shore activities themselves, and while they maintain branch offices in some jurisdictions they can frequently represent their clients' interests without the necessity of a local presence in the jurisdiction chosen by those clients.

41. The basic purpose of these intermediaries is to make it as simple as possible for individuals to establish and operate off-shore companies. Their services (obtained on simple payment of a fee) can include the provision of a local address (brass plaque), act as local agents (but with little or no actual functions) and provide nominee shareholders and directors for the company (again, with no real function except to provide a front and meet minimum legal requirements). In many cases the express purpose of these intermediary functions is to keep beneficial owners' names from official records.

42. In some jurisdictions that specialise in ensuring anonymity, official institutions may not undertake due diligence checks if an intermediary vouches for an anonymous client. This is despite the fact that the intermediary may not have carried out due diligence checks on the facts that are purporting to be true.

43. In the case of trustees, these can hide identities by not disclosing the person for whom he is holding shares as trustee. In other words, to all but more serious checks the nominee appears to be the true owner of the shares.

44. Lawyers and notaries can claim professional confidentiality to protect the identities of their clients. Some jurisdictions extend this privilege to management companies.

### *Institutional Devices to Cloak Identity*

*Private Limited Companies (and Public Limited Companies whose shares are not traded on a stock exchange)*

45. Because these companies are not listed on public stock exchanges they generally operate in less stringent regulatory and supervisory regimes. Their private nature means that their operations can be more secretive, not subject to any public scrutiny (e.g. by securities commissions or shareholder meetings), nor do they have to publish annual reports or financial accounts.

46. Such companies are easily converted to “shell” companies, where the company has no assets, undertakes no activities, but remains as an active corporate body with legal standing that can be sold and utilised by a third party for any purpose consistent with its articles of association. These “shell companies” can be found virtually anywhere, but are particularly prevalent, and available off-the-shelf for very little cost, in jurisdictions where such entities can also use nominee shareholders and corporations as directors and officers of the company. This enables these companies to be put into operation cheaply (probably less than \$US 1000), and with minimal involvement by the beneficial owner of the company.

47. Limited liability Companies (LLCs) are also available in some jurisdictions. In these there is no requirement to publicly disclose the identities of members.

48. Each of these types of companies can enhance the shield over the identities of beneficial owners by issuing bearer shares which, as noted earlier allow transfer of the ownership of the shares (and hence the proportion of the company that they represent) by simply handing them over to another person.

### *International Business Corporations (IBCs) and Exempt Companies*

49. IBCs are the primary vehicles used in international business and finance to facilitate international transaction. These can be established virtually instantly (many on-line) and at relatively low cost, and are available in many jurisdictions that specialise in off-shore activities.

50. A key feature of IBCs is that they are barred from doing business in the country of incorporation. This means that these companies are rarely required to lodge annual report to the authorities, nor do they pay any taxes. Consequently, as there is little incentive for rigorous monitoring they are rarely supervised.

51. In almost all cases such companies can employ all of the mechanisms available to disguise ownership and control, such as bearer shares and nominee shareholders and directors. Some jurisdictions provide for different regimes for resident and non-resident corporation, thereby further isolating those that are non-resident (and further enhancing their anonymity).

### *Trusts*

52. These are common law bodies that have many legitimate and useful purposes, but some of their features also provide considerable anonymity. Essentially trusts are vehicles intended to separate legal ownership and beneficial ownership, and enjoy a greater degree of privacy and anonymity than other corporate vehicles.

53. Trusts represent a contract between private persons, and as such many jurisdictions choose not to regulate them. The disclosure of the identities of either the beneficiary or the trust creator (the “settlor”) is rarely required.

54. Amongst other things, trusts can be used to conceal the beneficial ownership of assets, and can provide an ideal vehicle for those who wish to control how assets are used (e.g. a vessel), while remaining out of the limelight and unidentified. Some jurisdictions (e.g. Cook Is, Nevis and Niue) allow names of the settlor and beneficiaries to be left out of trust deeds and other usual requirements can be avoided.

### *Foundations*

55. Foundations are separate legal entities. They have no owners or shareholders, and are managed by a Board of Directors. They are the nearest civil law equivalent to trusts (which have their basis in common law). While they are essentially intended to fulfil private purposes in many jurisdictions these can also be created to engage in commercial activities.

56. Because of their nature Foundations are usually highly regulated, but in some jurisdictions there are few requirements for disclosure, and they are inadequately supervised. Frequently founders can exert significant control over their activities, even though they are not on the Board of Directors.

57. For example, in Panama government approval is not required for the establishment of Foundations, or for the amendment of their memoranda, and there is no government agency to supervise them. Also, the identity of beneficiaries (which can include the founder) are not required to be publicly filed, and foundations do not have to submit annual reports or accounts. Foundations can also be formed by nominees, thus ensuring that identities are further protected.

58. While trusts and foundations are comparatively clumsy vehicles to run shipping operations, they nevertheless offer a new layer of complexity and anonymity to potential terrorists, especially when their intention is not so much to use the vessels for direct terrorist act, but rather to use them to generate revenue and profits that can then be used to fund terrorist activities.

### *Partnerships*

59. Because of their status of unlimited liability these vehicles are less regulated than corporations, even though in some cases corporations, as well as individuals are permitted to serve as partners. In some jurisdictions limited liability partnerships are required to only register general partners, while those who are limited need not be registered publicly. These limited liability (and frequently anonymous) partners can still act as officers of the partnership, and can influence management.

60. While partnerships can be used effectively to hide activities or individuals (because of their relatively unregulated nature) their lack of corporate status means that they are not well suited to the ownership of vessels, where the partnership itself could not be the owner of a vessel, thus requiring the partners to reveal their identities in order to register the ship.

### **How does it all work?**

61. The foregoing sections have analysed a number of mechanisms and corporate devices that could be used to hide the identity of an owner who is reluctant, for whatever reason, to have his or her identity

known. Any one of these mechanisms could be used, with some degree of success to mask the identity of the beneficial owner, and would deter most investigations.

62. However, in many instances, such as in the case of a known terrorist wishing to remain hidden, the normal procedure would be to use a multi-layered approach, employing a variety of methods, spread over a number of different jurisdictions. Such corporate arrangements are common in the off-shore sector, and any investigators, be from taxation authorities, law enforcement agencies, security forces or others will find the cloaking processes almost impenetrable. Like peeling an onion, isolating and removing one layer simply reveals another, and another, and because these cloaking devices are relatively cheap and easy to create, those who have a need or a desire to do so can hide themselves very deeply indeed.

63. While a variety of mechanisms are available, in reality would be terrorists need to resort to only a small number of them. The effectiveness of the legal structure is in the repeated use of the mechanisms, and spreading their use over a number of different jurisdictions. Because each jurisdiction will have its unique legal system and administrative process, this will multiply the difficulties of investigators in dissecting the corporate structures. Also, using jurisdictions which make a strong selling point of protecting identities will further add to the difficulty in establishing final ownership of a vessel.

64. Finally, it is likely that after expending considerable investigative effort to reveal the first layers of the structure, it is likely that these will be perfectly normal, with no real effort made to hide ownership details (in these instances shares will all be owned by corporations). This will have two effects. First, it will create the impression that the investigations are complex, expensive and pointless, and in many cases they will be continued only if there are very strong reasons for doing so. Second, the initial "normal" layers means that investigators can never be sure that there is an anonymity problem until the investigation has probed far enough to find the first "hard" effort to hide an identity, such as an IBC with bearer shares. In such circumstances the true investigation will only just have begun.

### **How to construct a corporate web**

65. Individuals can be readily recognised, and the terrorist will try to lose his personal identity by acquiring a corporate vehicle that is untainted and legitimate. This can be done in a number of ways, but the vehicle of choice will probably be an International Business Corporation from an off-shore jurisdiction.

66. The first action would be to locate a jurisdiction which has strict laws of confidentiality, has geared itself to servicing the off-shore market. Because the principal objective on many of the jurisdictions is simply to collect the registration fees, it is unlikely that too many checks would be made on the details provided. There are any number of such jurisdictions, and these can be easily found on the Internet or through open advertisements found even in very reputable journals.

67. A number of examples are quoted in this paper, but this should not be taken a particular criticism of these jurisdictions as there are many off-shore centres offering such services. It may also be the case that some may in fact carry out effective due diligence on applicants for IBC's, but on the information and advertising material available on these business centres the overwhelming impression is that the objective is to facilitate the setting up of corporations, not keeping track of beneficial owners. For example, many offer one hour on-line company registrations, and anonymity is a strong selling point. Under these conditions is it unlikely that due diligence checks would be particularly extensive or effective.

### *Establishing a IBC*

68. An IBC can be established by virtually any person. Because IBCs are generally allowed to undertake their business only outside the country of registration they are designed to be cheap and easy to establish, and are lightly regulated. For example, in the jurisdiction of Antigua and Barbuda the procedure is extremely simple (the Application form to establish an IBC there is at Appendix C).

69. On this form the only name and contact details that are needed are those of the “person giving instructions”. This need not be the beneficial owner of the IBC that is about to be created. The Articles of Incorporation can be purchased off-the-shelf, and need not mention shipping.

70. The shareholder details provides the option of listing the name, address and number of shareholders of each shareholder, or alternatively the “number of bearer shares”. Clearly if anonymity is required the second option will be preferred, as it requires only a number to be inserted. The names of the holders of the bearer shares are not required.

71. Nominee Directors and other nominee officers of the company (e.g. the Company Secretary) are permitted, and can be provided by the intermediary (such as a law firm) that is handling the incorporation. As noted earlier, such nominee officers will fulfil the legal obligations of the IBC, and for all intents and purposes will conduct the business of the corporation. However, they have no linkage to the IBC beyond providing a fee for service, and will carry out the business of the corporation only on the instructions of the beneficial owners, that is the holders *pro-tem* of the bearer shares. Their identities are not recorded anywhere on the company register.

72. There are no other questions related to the identity of the owners of the company on the registration form, and all other requirements can be simply met through nominees or “brass plate” arrangements.

73. Finally, the registered office and local agent requirement can also be provided by local firms that specialise in providing such services on a fee basis.

74. Therefore, as long as the IBC maintains an agent in Antigua, and meets (the very minimal) reporting and annual meeting requirements (which can be undertaken by proxy), the terrorist will now have a legal corporation able to undertake business activities anywhere outside of Antigua.

75. If he so desired he could use this IBC to register a vessel on the Antiguan ship register. However, we are presuming that he would like additional depth and complexity in his arrangements in order further to hide his true identity.

### *Establishing further tiers of cover*

76. The process described above can be repeated, in different jurisdictions, for as many times as the beneficial owner believes is necessary to adequately protect his identity. Every additional layer means that any investigation trying to ascertain the identity of the true owner would be faced with a complex web of legal and administrative provisions intended to hide the information that is sought. It is most likely that the beneficial owner will be holding bearer shares through a series of off-shore corporations, so that even if the corporate veil can be lifted for one corporate entity, investigators will be faced with another equally complex labyrinth.

77. From the terrorist’s perspective the crucial feature of the corporate web that he would create is that at certain points there would be break points, where investigators would be blocked by mechanisms,

such as bearer shares which would be either impossible to track down, or could be passed from one person to another to prevent the true identity of the beneficial owner from being discovered. The key point here is that an investigation of this kind, which would be very complex and expensive, would only be undertaken if there was a strong reason for doing so (such as a suspected terrorist link after a serious incidence), but it would never be undertaken by a shipping register for a routine ship registration.

78. As a result of the current campaign against tax havens and money laundering, some off-shore jurisdictions have moved to limit the availability and use of bearer shares, principally through the requirement that they be registered, or held by a government appointed trustee. While this certainly limits their value to secretive owners it does not entirely remove the problem, because as long as there are jurisdiction that continue to make available the unfettered use of bearer shares, then those arrangements can always be moved to a more “friendly” jurisdiction.

79. In short, the ease with which these mechanisms can be woven into complex webs ensures that anonymity can be achieved against all but the most intensive investigations, and often even these might fail unless there is some external assistance to lift the veil (such as an informer).

### **Registering a Vessel**

80. Once the corporate shields have been created, the next step would be to actually register a ship. Because of the protection offered him by his corporate arrangements, the terrorist has plenty of choice, and here arises a particular concern that may be of special interest to security agencies concerned with the possible use of ships for terrorist purposes.

81. While there are Flag State administrations (both open and traditional) that are sometimes lax in the way in which they administer their registers, and therefore would be preferred by beneficial owners wishing to hide their identity, anonymity is not something that is restricted to a few rogue jurisdictions. Indeed, the problem is much more widespread than that, and therefore more difficult to pierce and to detect potential security risks.

82. The genesis of the problem, from the perspective of transparency of ownership, is that no shipping register, however diligent it may be in its scrutiny of vessel ownership and the strict application of the law, would be able to follow the ownership trail through the complex arrangements described earlier. The reality is that it is probably beyond the ability and resources of any register, wherever it is located, to unequivocally satisfy itself that it had identified the beneficial ownership of a vessel, if that owner was determined to protect his identity.

83. In the first place, most jurisdictions (including those of the OECD) allow for corporate ownership in one way or another. Immediately this means that the identity of the person who is the beneficial owner can be protected.

84. Second, in one way or another many jurisdictions allow foreign corporations to directly own vessels placed on their register. This is certainly the case in open registers, where one of their principal attraction is that there are no nationality restrictions on the owners of vessels on that register. These of course would be the preferred destination of a potential terrorist, as it would be highly unlikely that those jurisdictions, even if they could, would actively undertake any due diligence checks on the owners; after all their main selling point is anonymity.

85. Again, as an example of the veil of secrecy that can be achieved, the following information was drawn from the Internet site of the Marshall Islands Register (but this is by no means unique as there are many other examples). To register a vessel in the Marshall Islands is necessary to meet some

qualifications. These can be met by the establishment of a Limited Liability Company (LLC), which are described as follows:

*"Regardless of the circumstances surrounding the creation of a business entity, generally the goal is to maximise profitability, while minimising the risk of exposing beneficial owners to personal liability. The LLC provides this by combining the best traits of corporations and partnerships, while eliminating many of the drawbacks."*

86. The incorporation of an LLC can be made by a foreign corporation, registrations can be done on-line, and bearer shares are permitted. To further encourage the would be recluse owners, the Internet site also advises that:

*"Documents filed in connection with registration of a ship in the MI do not require consular authentication."*

87. Similar arrangements can be found in all open registers, and these quite clearly would offer substantial protection to the identity of beneficial owners.

88. These open registers are well known, and would probably be the first to attract attention should security concerns focus on the ultimate ownership and control of ships. However, because the mechanisms to hide identities involve corporate arrangements that go well beyond the ship registers themselves, it is possible that more traditional, and quite highly regarded registers could also find themselves (perhaps unwittingly and unwillingly) used by potential terrorists for their own aims.

89. The genesis of this problem is the ability of corporations to be either partial or whole owners of ships. This practice occurs widely in jurisdictions both inside and outside the OECD, and is found in both open and traditional registers. From the perspective of normal business practice, allowing corporations to own ships makes good sense, and seen in those terms is a perfectly legitimate practice. However, from the perspective of tracking down the beneficial owner of any given ship this can create serious difficulties.

90. Most traditional registers have an interest in limiting vessel ownership to their own nationals, or at least to ensure that some kind of "genuine" link (in the words of the UN Law of the Sea) exists between the ship and the country which registers it. Some registers will insist that some quite stringent nationality participation be met before allowing a ship to be registered.

91. However, many (perhaps most) traditional jurisdictions will also allow a locally registered subsidiary company, fully owned by a foreign corporation to meet the requirement for local ownership, and therefore qualify to register a vessels under that flag. In some circumstances this could allow substantial or total ownership of a vessel to be owned by a foreign beneficial owner whose identity will not be known.

92. This can happen because the sole check of the parent company will be to establish whether it is a legal entity, and this status can be achieved quite readily through the means described in detail in earlier sections of this paper. Therefore, a check by authorities of the ship register (if one is made) will find a perfectly legitimate corporate entity.

93. What will not be found by that check is the true identity of the beneficial owner. Indeed, unless the check is unusually thorough, or at least the investigators suspect a potential problem and are on the lookout for possibly suspicious circumstances, then it most unlikely that lack of an identity of the ultimate beneficial owner will even become known.

### *The potential exposure of OECD registers*

94. A number of members of the MTC responded to a questionnaire circulated to obtain information on how foreign corporations are treated in the ship registration process. The questionnaire can be found in Appendix D.

95. The purpose of that questionnaire was to obtain some basic information, and there was no intention that responses would be catalogued or made public. However, the responses have been analysed by the Secretariat, and the basic conclusion has emerged that while efforts by a would be terrorist to register a vessel in those traditional registers may not be as straightforward as registration in an open register, it could nevertheless be possible.

96. A number of respondents indicated that subject to meeting some requirements foreign corporations could own vessels registered under their flags, especially in instances where they incorporated a local subsidiary. From the information provided it seems unlikely that background checks try to uncover the identity of the beneficial owner. In fact all respondents indicated that their interest would stop once the legality of the foreign parent company had been established. As discussed earlier this is not difficult to achieve using quite lawful and internationally recognised means available in many jurisdictions.

97. One responding country noted that while its legislation would enable the beneficial ownership of to be established, in practice the only check that was undertaken by the register was to establish that the corporation was legally incorporated, with no real efforts made to establish the ultimate beneficial ownership. Given the complexity of corporate veils that can be established internationally it would not be surprising if the practice in most countries would be not to delve into the complex arrangements described in earlier parts of this paper.

98. Of course, the value of registering a vessel in a traditional register, though the process would be more complex than registration in an open register, is that this may provide the vessel with greater cover against detection than an open flag; principally because it would probably not be expected by security forces.

99. This is not to suggest that vessels owned by terrorists are indeed registered in a traditional register, but the possibility that this could occur should not be discounted.

### **Special Circumstances than may need further investigation**

100. The possibility of similar problems arising from some special relationships have also arisen during the course of this analysis, without it being definitely established that this could be a problem in practice. However, they are noted here as a precautionary measure, and to raise the question as to whether additional investigation and analysis should be undertaken to confirm or discount them.

### *The Status of Dependencies, Overseas Territories etc*

101. A number of OECD countries maintain very close relationships with dependencies, overseas territories and other jurisdictions with special constitutional and/or administrative arrangements. Examples of these would be the UK (Gibraltar, Cayman Islands etc), France (Nouvelle Calédonie and others), the Netherlands (Netherlands Antilles) and Australia (Norfolk Island). There may be others.

102. Many of these territories operate as off-shore centres which derive a considerable amount of their revenue from international business activities, such as providing facilities to incorporate International Business Corporations (IBCs). Also, many of them operate shipping registers.

103. On the one hand these territories offer themselves as centres of financial and business excellence, and use their links with their former administrations (or “home” countries) to establish their credibility. On the other hand, as part of their efforts to attract investment and revenue, they also provide off-shore services which offer mechanisms necessary for owners to ensure their anonymity.

104. The circumstances that exist in one of these territories/dependencies have been used to highlight the possible effects that these special relationships could have on transparency in the ownership and control of ships. While these details drawn on here are freely available from the public domain, the identity of the particular administration will not be revealed, as it would be unfair to highlight one administration and “home” country in this when similar circumstances also apply in a number of others. The particular instance drawn on here illustrates that it is possible for some of these territories to fly the flag of the “home” administrations, and that locally registered companies, regardless of the nationality of its beneficial owners would benefit as the owners of a vessel associated specifically with the “home” country. In this specific instance it is also possible to claim an advantage through benefits of diplomatic representation and naval protection from the “home” country.

105. At the same time as claiming these advantages (which may be no more than enticements to shipowners to register their vessels there), this administration also permits corporations established there access to the most common and effective mechanism to hide identities, such as nominee directors and shareholders, and bearer shares. Also, it seems that linked territories recognise each others' corporations as meeting their own nationality requirements (where these exist). Therefore once established in one of these linked territories it seems that a corporation would be accepted in all other linked territories.

106. This could mean that a company incorporated in one territory (with foreign beneficial owners) could then move to another territory to either incorporate another company or to register a ship, without raising any further concerns regarding its provenance. It is not known whether this would also facilitate access to the “home” country’s own ship register. Similar circumstance could exist in any OECD country which maintains links of these kinds with their overseas dependencies.

107. This is not to suggest that these territories or indeed the home administrations are aiding and abetting terrorists, nor that the activities of terrorists have been in practice facilitated by these arrangements. However, in dealing with security concerns it is wise to suspect even the unexpected, and these practices intended to facilitate business practices probably deserve some closer attention to ensure that they do not unwittingly offer some kind of legitimacy and assistance to potential terrorists (and thereby making it easier for them to mask their activities).

### *Free Trade Arrangements*

108. In very similar circumstances, some free trade arrangements (with the EU being the most obvious but perhaps not only example) may have removed many internal barriers, but not harmonised all of their internal laws. Therefore, while some members of the free trade arrangement may allow foreign interests to partially or entirely own ships, others may not. If there is also a general agreement whereby a corporation of one member would satisfy the nationality requirements in another member state (as is the case in the EU for example), then this could potentially facilitate foreign participation, even when this was not an intended consequence. However, the practical application of this effect has not been studied in detail, but again is mentioned as a potential problem that should not be ignored.

## How to recognise a register that facilitates anonymity

109. The discussion above suggested that even the most rigorous of registers may not be able to totally escape the attention of a terrorist determined to maximise the chances of his vessel remaining undetected by security agencies, while still maintaining anonymity for his own identity.

110. However, it is also true that other registers, especially those that are open, are much easier targets in which to hide the identity of a beneficial owner. Indeed, as already noted, many open registers make a virtue of their confidentiality.

111. While Appendix B provides details on the ownership requirements of a number of open registers (which as a group represent those where anonymity is most easy to obtain), this is by no means exhaustive, and is not intended to be a comprehensive guide of where anonymity is most easily available. Therefore, the following list of criteria is provided as a guide to assess, on the basis of their individual systems, which registers may facilitate anonymity to beneficial owners. Generally, the greater the number of mechanisms that are offered the easier it will be for potential terrorists to hide their identities.

112. One aspect that cannot be measured by this kind of analysis is the effectiveness with which individual jurisdictions implement their own laws. In other words, a jurisdiction which on paper has quite strong laws to facilitate the uncovering of beneficial ownership, but where these laws are inadequately applied and enforced, could still offer substantial protection to terrorists. Unfortunately, there is no way that this particular study could make any kind of assessment of this aspect of ownership and control.

### Mechanisms that would facilitate anonymity

Mechanism	Effect
Corporate Ownership of vessels permitted	This allows the identity of individuals to be hidden behind a corporate legal entity
No nationality requirements	This allows any person, or corporation, to own the ship, which makes identities easier to mask.
Participation of IBCs permitted	This opens up and facilitates the use of corporations designed to ensure anonymity
Identity of beneficial owners of the vessel, or the owning corporation not required	This information, even if obtained, may be legally protected except for the most exceptional circumstances, and then presumably only after considerable legal process, allowing beneficial owners the opportunity to cover their tracks.
Bearer Shares permitted	This is the ultimate cloaking device, as it allows near total anonymity, as well as the ability to instantly transfer ownership by simply passing the shares from one person to another.
Nominee Shareholders and Directors and permitted	Allows local intermediaries, with no genuine connection to the company, to meet legal requirements without actually making any decisions on behalf of the company. This allows anonymous beneficial owners to control the company from the background.
No formal reporting requirements	Means that the company never needs to report on its activities or financial transactions

No formal meeting requirements	This allows the company to meet any formal requirements (such as Annual Meetings) to be held off-shore, or even by proxy, thus providing additional cover for beneficial owners.
--------------------------------	--

## UNITED NATIONS LAW OF THE SEA

### **Article 91** **Nationality of ships**

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

### **Article 92** **Status of ships**

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

### **Article 94** **Duties of the flag State**

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
  - a. maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
  - b. assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
  - a. the construction, equipment and seaworthiness of ships;
  - b. the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
  - c. the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

- a. that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- b. that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- c. that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

## **Article 217**

### **Enforcement by flag States**

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph I, including requirements in respect of design, construction, equipment and manning of vessels.

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of

the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.

6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

**REGISTRATON REQUIREMENTS OF SOME REGISTERS THAT COULD FACILITY ANONYMITY <sup>2</sup>**

<b>Register</b>	<b>Nationality and Ownership requirements</b>	<b>Registration requirements &amp; facilities</b>	<b>Corporate vehicles</b>	<b>Mechanisms for achieving anonymity  (bearer shares/nominee shareholders/directors)</b>
<i>Anguilla</i>	No nationality requirements	Minimum 1 director/manager no local director/manager required no requirement to file annual return	International Business Companies (IBCs)	No disclosure of beneficial ownership Bearer shares allowed Corporate directors permitted
<i>Antigua &amp; Barbuda</i>	This register's individual approaches and flexibility are its selling points -- An Antiguan company must be created before a ship can be registered	Company must have a registered office and agent. A firm of chartered accountants may be appointed as registered agent. Registration procedure only requires name of the persons giving instructions -- No statutory accounting or auditing of records need be filed	IBCs	No disclosure of beneficial ownership Bearer shares provided for local directors can be nominees

2. This information has been obtained from the registers' web sites and other publicly available sources.

<b><i>Bahamas</i></b>	No nationality requirements  Only ownership requirements are the names and registered office of owners (presumably individuals and corporations) and number of shares held	Certificate of incorporation required minimum 1 director/manager	IBCs No requirement to file annual accounts	No disclosure of beneficial ownership Corporate directors accepted
<b><i>Barbados</i></b>	No disclosure of ownership A foreign owner, irrespective of nationality, can hold title to a Barbados flag ship	Barbados offers off-shore company registration facilities		No disclosure of beneficial ownership
<b><i>Belize</i></b>	No requirements concerning local ownership or participation in ownership	Registration form requires name and contact details of company .  No requirement to file annual accounts	IBCs	Bearer shares are available. No disclosure of beneficial ownership to authorities Directors can be corporate
<b><i>Bermuda</i></b>	Majority of shares must be held legally and beneficially by “qualified persons” which can include individuals or corporations from a wide range of British connected location, including for example the Pitcairn Islands	Declaration of ownership must be completed to confirm details of ability to own a British ship. PO Boxes not acceptable, needs full address of principal place of business minimum 2 directors/ managers no requirement to file accounts As part of the Red Ensign Group of registers, Bermuda registered ships are	IBCs	

		entitled to fly the UK Red Ensign, to British consular representation and the protection of the Royal Navy		
<b><i>Bolivia</i></b>	No restrictions on nationality of ship owners			
<b><i>Cambodia</i></b>	No restrictions on nationality of owners Any legal entity (person or corporation) capable of owning a ship in the country in which is registered or is domiciled can own a vessel	Takes 2 days to register (form requires full names and addresses of owners)		
<b><i>Cayman Islands</i></b>	To qualify to register a vessel in the CI the majority interest must be owned by one or more "qualified person". Qualified person refers to an individual or corporation of the UK, EU or other British Overseas Territories.	If qualified person is a corporation then it must keep a "place of business" in the CI, the EU or certain other specified British dependencies. If vessel is owned or held by a Cayman corporation then it will qualify for registration, regardless of nationality of its beneficial owners. 2 days to incorporate company minimum 1 shareholder/1 director/manager Registered office required and maintained in CI	3 types of company: ordinary non-resident companies, ordinary resident companies and exempt companies  Shelf companies available	No disclosure of beneficial ownership Corporate directors permitted Bearer shares available but must be held by an approved custodian

		<p>A company is not required to file information regarding the directors, shareholders and officers and there is no requirement to file accounts of the company's financial affairs.</p> <p>NOTE: Red Ensign flag entitles ships to the protection of the Royal Navy</p>		
<b><i>Costa Rica</i></b>	Supposedly owners must be Costa Rican citizens or corporations (but this register appears on a web site promoting FOC registers)	Minimum 4 directors/managers no requirement to file accounts	Sociedad Anonima (SA) Shelf companies available	No disclosure of beneficial ownership
<b><i>Cyprus</i></b>	More than half of the shares must be held by Cypriot individual, or a corporation established and with its registered office in Cyprus. Council of Ministers can waive this rule for non-Cypriot corporations	Minimum 1 director/manager	IBCs	Disclosure of beneficial ownership but confidential corporate director/manager permitted
<b><i>Rep Djibouti</i></b>	Any person or company, irrespective of nationality or place of incorporation may register a ship in Djibouti	Requirement appoint a local representative agent. Minimum 1 shareholder/1 director no filing of	Djibouti law has set up a new type of public company in the free zone of the port "société anonyme de la zone" or SAZF when companies do not perform	Bearer shares permitted

		accounts required	business in the customs territory of the Republic. Such a company may be formed without capital and may be registered in some Djiboutian consulates. The registered office is the area of the free zone.	
<b><i>Dominica</i></b>	There are no nationality requirements	All companies are required to have at least one director. Only one shareholder is required. Corporations may act as shareholders.  Each non resident domestic corporation must have a registered agent and address in Dominica, available via the International Trust of Dominica	A non-marine company can be used to register a ship.  IBC can be obtained in 24 hours.  No requirement to file annual accounts. No minimum capital requirement.	Officers, owners, and directors' names need not be disclosed, nor must the company state a specific purpose of incorporation.
<b><i>Gibraltar</i></b>	Same conditions as Cayman Islands			
<b><i>Hong Kong</i></b>	Majority interest must be held by one or more "qualified persons".  To be a qualified person, you must be an individual who holds a valid HK identity card and who is ordinarily resident in HK; OR	A representative person has to be appointed in relation to the ship  A representative person can be: A qualified person who is the owner or part owner of the ship; OR a body corporate incorporated in Hong Kong which	IBCs	No disclosure of beneficial ownership Corporate directors accepted

	<p>a body corporate incorporated in HK; OR  a company registered under Part XI of the Hong Kong Companies Ordinance.</p>	<p>is engaged in the business of managing, or acting as agent for, ships.</p> <p>The interest of a ship may be divided into any number of shares or parts, and each share or part of the ship can have any number of registered owners</p> <p>A body corporate should register as an owner of the ship by its corporate name</p>		
<b><i>Honduras</i></b>	No nationality/resident requirements	Owners of foreign vessels must submit all necessary documentation to a lawyer in Honduras for onward transmission to the Merchant Marine		
<b><i>Isle of Man</i></b>	<p>Flexibility in ownership requirements. Majority interest in the ship must be owned by one of the following: companies incorporated in the Isle of Man and having their principal place of business in ÍOM OR companies incorporated/having principal place of business in UK, Channel Island,</p>	NOTE: Red Ensign flag entitles ships to the protection of the Royal Navy	IBCs	<p>Bearer shares not permitted  No disclosure of beneficial ownership</p>

	any British Dependent Territory (BDT) (Anguilla, Bermuda etc) OR companies incorporated/having place of business in EU & EEA OR British citizens, British overseas citizens, BDT citizens			
<b><i>Jamaica</i></b>	Ownership made by: -- a Jamaican resident or registered company -- a partnership or limited partnership as long as there is an authorised representative or agent in Jamaica -- a foreign maritime business as long as it has a managing owner or authorised representative/ agent in Jamaica			
<b><i>Latvia</i></b>	Registration of vessels owned by natural person or persons permanently living in Latvia; owned by legal person or persons duly registered in Latvia as prescribed by legislation; owned by foreign natural or legal person or persons			

<b><i>Liberia</i></b>	Registration available to any shipowner Liberian citizenship can be met by Liberian IBC, which can be established in one day and can include bearer shares	Minimum 1 shareholder/ 1 director/manager no local director/manager required no requirement to file accounts	IBCs allowed	No disclosure of beneficial ownership Bearer shares permitted Simple waiver is available to avoid Liberian ownership requirements, and this can be requested by a Liberian person representing the principals. These need not be named Corporate directors permitted
<b><i>Madeira</i></b>	Those whose purpose is that of marine transportation of persons and goods. Applicants may be companies of other forms of partnerships, branches, agencies or legal representatives licenced or not to operate in the legal framework of Madeira's International Business Centre	It is normal to appoint two directors to a Lda and three to a SA. The directors must be natural persons of any nationality and need not be resident in Madeira. Their identity appears in the public record Unipersonal companies may have one shareholder and no share certificates are issued.	Two types of company: Madeira Limitada (Lda) and Madeira Sociedade Anonima (SA)  IBCs	No disclosure of beneficial ownership Madeira Sociedade Anonima (SA) companies may issue either registered or bearer shares with voting or non-voting rights.
<b><i>Malta</i></b>	Has to be owned by Maltese citizens or Maltese corporate bodies.	Company subject to the minimum of two shareholders and one director, there are no requirements or restrictions as to the number, residence or nationality of the shareholders and directors. A Maltese	Intl Holding Company (IHC) International Trading Company (ITC)	The identity of the beneficial owners of an International Trading Company may remain confidential if they incorporate the company through the services of a licensed nominee company. Confidentiality is maintained as long

		Company is obliged to maintain a registered office address in Malta and must also appoint a licensed Maltese "Nominee Company" as company secretary or sole director.		as the company and its beneficial owners are not involved in any money laundering activity
<b>Marshall Islands</b>	Marshall Islands national, corporation, limited or general partnership or foreign entity qualified in the MI or an MI Trust	The MI requirements can be met by a Limited Liability Company registered in the Marshall islands Regardless of the circumstances surrounding the creation of a business entity, generally the goal is to maximise profitability while minimising the risk of exposing beneficial owners to person liability. The LLC provides this by combining the best traits of corporations and partnerships, while eliminating many of the drawbacks 1 member/1 director/manager		No disclosure beneficial ownership Bearer shares possible corporate directors/managers permitted Documents filed in connection with registration of a ship in the MI do not require consular authentication
<b>Mauritius</b>	Owner has to be citizen of Mauritius  Companies incorporated in Mauritius which are effectively controlled by Mauritian citizens			Disclosure of beneficial ownership but not public

	Companies incorporated in Mauritius or incorporated abroad, provided they receive the approval of the relevant authorities Registered offshore companies and International Companies provided their objects are confined to the registering of ships under the Mauritian flag and their shipping activities are carried out exclusively outside Mauritius			
<b><i>Panama</i></b>	Registration can be effected by any person or company, irrespective of nationality or place of incorporation	1 member/3 directors/managers required no requirement to file accounts	Shelf company available - 2 days to incorporate	No disclosure of beneficial ownership Corporate directors permitted
<b><i>Seychelles</i></b>	Ownership can be 100% foreign  Either a Seychelles citizen or  A Seychelles Body Corporate established either as IBC or as a Domestic company with the Registrar of Companies.		IBCs allowed to be registered with the International Business Authority (SIBA),	No disclosure of beneficial ownership Bearer shares permitted

<b><i>Singapore</i></b>	Vessels must be owned by citizens and permanent residents of Singapore/companies established in Singapore	1 member (corporation) 2 (individual) 2 directors/managers A company wishing to register a ship needs to provide name, address and nationality of Chairman or President and each of its directors/of every shareholder of the company and the number of shares held by each	Shelf companies available	
<b><i>Sri Lanka</i></b>	Vessel must be owned by citizens or any body corporate as may be determined by the minister		A company may be incorporated in Sri Lanka through a Sri Lankan legal firm and may then apply for offshore status	
<b><i>St Kitts and Nevis</i></b>	Nevis physical person or body corporate	Registered agent only one director/one shareholder		No disclosure of beneficial ownership corporate directors permitted bearer shares permitted
<b><i>St Vincent/ Grenadine</i></b>	St Vincent and Grenadines nationality for individuals, but bodies corporate, partnerships or other associations of individuals registered in a foreign country can own a vessel.	Foreign ownership requires registered agent in St V & G  one director/one shareholder They may be natural persons or bodies corporate. They may be of any nationality and need not reside in SVG	IBCs incorporated in one day	No disclosure of beneficial ownership corporate directors permitted bearer shares permitted

<b><i>Kingdom of Tonga</i></b>	Tonga will register vessels owned by an national or foreign corporate body or individual, in accordance with the laws of Tonga	Register managed by the Phoenix Register of Shipping, in Greece		
<b><i>Vanuatu</i></b>	Ship registry is described as “independent” and is open to owners of any nationality		IBCs	No disclosure of beneficial ownership Corporate directors permitted bearer shares allowed no government register of directors/shareholders

**APPLICATION FOR FORMATION OF  
INTERNATIONAL BUSINESS CORPORATION**

**1. To:** Application for IBC formation can be processed by several Antiguan law firms.

**2. From:** (name, address, telephone and telefax of persons giving instructions)

.....  
.....

**3. Proposed Company Name:** (give at least two names in order of preference)

.....Company Limited  
.....Company Limited

**4. Articles of Incorporation & By Laws**

Standard Shipping - for bareboat chartering of .....  
or permanent registration of .....

**5. Share Capital:**

.....Standard (US\$ 10.000 divided in 10.000 shares of US\$ 1.00 each)  
.....Other (Specify)

**6. Shareholders:** (name, addresses and number of shares each **or** number of barer shares)

.....

**7. Names, Address, Occupation and Citizenship of Directors:** (Specify if local director is to be provided by the Antiguan law firm)

.....

**8. Officers:** (Secretary will be provided by the Antiguan law firm unless otherwise specified)

President.....  
Secretary.....

**9. Financial year:** (Unless otherwise specified, calendar year adopted)

.....

**10. Where the company will be operating**

**from:**.....

**11. Original documents to be forwarded by:** Airmail.....Courier.....

**12. Address to which invoices, correspondence should be forwarded:** (include telephone and telefax numbers):

**Ownership and Control of Ships****MARITIME TRANSPORT COMMITTEE****Maritime Security: Ownership and Control of Vessels*****Background***

The MTC approved this project at its July 2002 meeting. Step 1 of this project entails the:

- Collation of information on registration requirements of various major registries, especially those that are open; and
- Identification of those activities, procedures or processes that prevent transparency of ownership and control and attempt to identify those registers that facilitate such opacity.

The Secretariat has commenced its data collection, and has accumulated considerable information on a number of registers, both large and small. The focus of this data collection has been on “open” registers.

The Secretariat has also compiled a list of activities, practices and procedures that facilitate the maintenance of anonymity by those who own and/or control ships. These have been compiled with the assistance of those areas of the OECD that have specialised in corporate governance.

***Assistance from MTC Delegations***

In the course of its work so far the Secretariat has been drawn to the inevitable conclusion that there is more than a casual relationship between registers and the corporate registration requirements that are prevalent in the international business sector. It has struck the Secretariat that while some registers quite blatantly promote and encourage anonymity in their registers many others, whose intention appear to be to encourage transparency, may find their intentions thwarted by the use of corporate vehicles that could blur or hide the identity of owners.

Many of the effects of the use of such corporate vehicles are not obvious from simply reading legislation and published material on the operation of those registers. Therefore, to better understand how these corporate vehicles are handled in practice in OECD member countries, the Secretariat is seeking the assistance of as many MTC members as possible to compile some additional information on practices and the practical implementation of registration laws and regulations.

We believe this will eventually provide the Committee with a much clearer view of how such corporate practices are used, especially in open registers, to achieve anonymity. In addition, this may lead to some useful understanding of how these corporate vehicles could even be used in registers which encourage transparency, and this may alert those registers to be on the look-out for instances where otherwise seemingly innocent procedures may in fact be masking activities that could have security implications.

We would therefore be grateful for your assistance in compiling this information..

*Questions for Registering Authorities*

The MTC Secretariat would be grateful if Delegations could ask their ship registering authorities to answer the questions in the attached questionnaire relating to the legal requirements, and actual practices involved in ship registration, and return the questionnaire by cob on Friday 18 October..

MTC Secretariat  
Paris September 2002

## QUESTIONNAIRE ON SHIP REGISTRATION PRACTICES

*Jurisdiction* \_\_\_\_\_

**Please Note:** The premise behind this project is that knowledge of beneficial owners of ships (and therefore those who have ultimate control of them) will be helpful to the efforts of security forces to prevent or forestall the use of ships by terrorists for their own purposes.

The transparency of beneficial ownership can be effectively masked through the use of many practices during the creation and management of otherwise normal corporate vehicles, like companies, trusts and foundations. The purpose of this questionnaire is to better understand how feasible it is, using legislation, regulations and practice in force in OECD countries, to either prevent terrorists from having controlling interests in ships, or to peel away those masking layers so that their identities can become visible to security forces.

We would be grateful if you could provide as much information as possible on the legal and (in particular) the practical treatment in your jurisdictions of the matters raised below.

### *Question 1*

- . *In your jurisdiction, are corporate bodies able to register vessels*
  - a) as whole, or*
  - b) as partial owners?*

### *Question 2*

- . *If corporations are permitted as owners:*
  - *are foreign corporations permitted to be direct owners of vessels flagged in your jurisdiction*
  - *does your legislation and/or practice enable you to discover the ultimate beneficial owners of those corporations, whether they are local or foreign?*

### *Question 3*

- . *If corporate ownership is permitted, would a corporation registered in your jurisdiction, but wholly or majority owned by a foreign corporation, legally registered in another jurisdiction, meet your nationality and other registration requirements?*

*Question 4*

- . If this is permitted, would you require the ultimate beneficial owner(s) of that foreign corporation to be declared, and in practice is this possible?*

*Question 5*

- . With respect to foreign corporations, would shelf companies (such as International Business Corporations that are readily available in some off-shore jurisdictions) be acceptable?*
- . Would a foreign corporation which has nominee shareholders, nominee directors or bearer shares, or trusts and foundations be acceptable, if those corporate instruments are legal in the jurisdiction in which that foreign entity is incorporated?*
- . If any of these are acceptable, would you require the ultimate beneficial ownership of these corporate entities to be declared?*